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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KATHY M. FORLINE, Plaintiff and Respondent, v. BLAKE CHENIER, Defendant and Appellant.	G042242 (Super. Ct. No. 09V000534) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Nancy A. Pollard, Judge. Affirmed.

The English Law Corporation and Ryan N. English for Appellant.

Julie A. Duncan for Respondent.

Blake Chenier appeals from an order[1] after hearing restraining him from being within 100 yards of Kathy M. Forline for five years and awarding damages to her. Chenier argues the trial judge was biased, the trial court erroneously admitted evidence, and insufficient evidence supports the court's ruling. We disagree and affirm the order.

FACTS

Forline and Chenier dated for several months and lived together for a short period of time. They ended their relationship in early March 2009, and Chenier began dating Forline's roommate Lindsay Morrison shortly thereafter. The house where Forline and Morrison lived was a three-bedroom residence. Forline and her young daughter lived in one room, Morrison in another room, and a male in the third room.

On the evening of March 11, Forline and her daughter were in their room. Chenier and Morrison arrived at the residence at approximately 11:30 p.m. The events that transpired later that evening and into the next morning form the basis of the restraining order. Because there are different versions of the events, we will provide Forline's and Chenier's respective stories taken from testimony at the April 30th hearing.

Forline testified to the following: at approximately 5:00 a.m., she heard Chenier and Morrison having sexual intercourse and she was upset because her daughter was home. She yelled he was a "pig," and to "'get out of [her] house.'" As she stood in the doorway to her room, Morrison exited the bathroom and pushed her shoulder into Forline, and Forline shoved Morrison. Chenier choked Forline with his right hand and grabbed her wrist with his left hand. When Forline threatened to call the police, Chenier replied he was not afraid of the police, and Forline said she was going to call his father, which she did. Chenier and Morrison left.

Chenier testified to the following: at approximately 1:30 a.m., Morrison exited her bedroom to use the restroom and Forline was waiting in the hallway. He was

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[1] *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1502 & fn. 9.

lying in bed "half asleep." Forline grabbed Morrison's hair and threw her against the wall. Chenier stood up, but he did not touch her or say anything to her.

Morrison testified to the following: she exited her bedroom to use the restroom and Forline was standing in the hallway. Forline angrily said, "'Are you serious?'" Forline grabbed Morrison by the hair and threw her into the wall. Morrison stated Chenier did not leave the bedroom or say anything to Forline.

Forline and her daughter moved out of the house a couple weeks later. On March 16, 2009, Forline requested and the trial court granted her a temporary restraining order against Chenier. On April 7, the trial court extended the restraining order to April 30.

At a hearing on April 30, Forline requested the restraining order be extended. Before Forline's counsel could begin her direct examination, the trial judge inquired of counsel whether in the interests of time, the judge could question her client. Counsel agreed. The trial judge questioned Forline regarding Chenier throwing things at her, spitting on her, and choking her. Forline testified that when she and Chenier were at Lake Havasu in July 2008, she was sober, but Chenier was intoxicated and upset. She claimed he broke her cellular telephone and when she took his cellular telephone and ran, he threw rocks at her. The trial judge asked Chenier's counsel whether she could address his client and counsel agreed. After the trial judge asked Chenier where he was born and Chenier responded "Newport Beach, California" the trial judge stated: "I'm concerned about the throwing of the rocks and the spitting. I've been doing domestic violence now for 14 years. Usually that is the kind of behavior I see in Middle Eastern clients, but almost -- if I read a declaration where they say, 'he spit on me, he threw rocks at me,' almost always it's a Middle Eastern client. If the declaration says, 'he drags me around the house by the hair,' it's almost always a Hispanic client." Chenier's counsel stated, "It's neither the case here, but I think I can clear that up on direct."

Forline's counsel proceeded with direct examination. Forline alleged that before the March 11/12th incident, he broke her television with a knife, and the next evening, he hit her, spit on her, and threw protein powder on her. She also claimed that before the March 11/12th incident, he threw things at her and damaged her property. She claimed that after the March 11/12th incident, he continues to send her and her children threatening text messages and appears in her new neighborhood. She also stated Chenier stole a very expensive handbag and some video games. On cross-examination, Forline testified she witnessed Chenier spit on, trip, and pull the hair of his ex-girlfriends. Forline admitted she did not include the stolen property in her moving papers and explained it was because she was more concerned with her personal safety.

Chenier testified on his own behalf. Chenier stated he never choked Forline, spit on her, threw her against a wall, kicked her, threw anything at her, or poured anything on her. He also denied threatening her or her family. He denied assaulting any of his ex-girlfriends. He admitted breaking Forline's telephone at Lake Havasu but denied damaging any other property. He claimed Forline assaulted him and a girlfriend in a bar. When his counsel asked him whether he was "Middle Eastern" or "Hispanic" Chenier responded he was neither. He described himself as "white."

On cross-examination, Forline's counsel immediately asked Chenier whether he had any tattoos. Chenier's counsel objected on relevance grounds. Forline's counsel stated he had tattoos that said, "'Only Killers Survive,'" "'5150,'" and "'F-T-W'" and they were relevant to his violent nature. The trial court asked Chenier whether he had a tattoo that included the word "kill," and he replied, "Yes." When the court asked what it stood for, he responded "'Only Killers Survive'" and one of his friends was in the Army. The court asked him to show her the tattoo and requested the bailiff's assistance. Although the record does not indicate where on his body the tattoo is located or what the bailiff did to see the tattoo, the bailiff said the tattoo said "'Only Killers Survive,'" and included an image of a hand grenade. There was further

discussion concerning his other tattoos. Counsel then asked Chenier whether he gets into fights, and after the trial court overruled Chenier's counsel's relevance objection, Chenier responded, "No." When counsel asked him surprisingly he had never been in a fight, and the court again overruled a relevance objection, Chenier replied he had been in a fight in grade school. The court stated: "Counsel, your client sits here with very terse 'yes' and 'no' answers to lead the world to believe he is a pacifist, and I don't believe him. I find him not to be credible." Counsel asked him whether he had ever been expelled from high school for fighting. After the court again overruled a relevance objection, Chenier responded, "No."

Chenier also offered the testimony of his older brother, Warren Chenier (Warren). Warren testified he was with the couple at Lake Havasu in July 2008. Warren testified they were both drinking alcohol and he heard them argue. He saw Forline break Chenier's cellular telephone and heard Chenier broke Forline's cellular telephone. Warren stated he never saw Chenier assault or act aggressively towards Forline or any ex-girlfriend.

DISCUSSION

I. Judicial Bias

Chenier argues the trial judge "allow[ed] [her] ethnic, racial, and gender prejudices to influence [her] analysis of the facts in this case." As we explain below, the trial judge's comments were troubling. But Chenier forfeited appellate review of this issue by not objecting at trial, and in any event, his claim is unpersuasive.

A. Forfeiture

In *People v. Samuels* (2005) 36 Cal.4th 96, 114, the California Supreme Court held: "Failure to raise the issue of judicial conduct at trial waives claims of statutory or constitutional error. Because defendant failed to raise a proper objection, the issue is waived on appeal. [Citation.]" Here, Chenier did not object to the trial judge's statement on any grounds. Instead, counsel stated he would "clear that up on direct."

Thus, he forfeited appellate review of his claim the trial judge was biased against him because of his ethnicity, race, or gender.

Chenier cites *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237 (*Catchpole*),[2] for the principle that claims of judicial gender bias cannot be forfeited because the issue involves one of public interest and due administration of justice. As we explain above, the California Supreme Court subsequently stated a party must object at trial to alleged judicial bias or the claim is forfeited.

B. Merits

A judge's impartiality is evaluated by an objective standard. The question is whether a reasonable person aware of all the facts would entertain doubts concerning the judge's integrity, impartiality, and competence. (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841, disapproved on another point in *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336 & *Freeman, supra*, 47 Cal.4th 993; *Catchpole, supra*, 36 Cal.App.4th at p. 246.) Chenier has the burden of establishing facts supporting his claim of judicial bias. (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926.) He has failed that burden.

Here, the trial judge's inappropriate statement concerning Middle Eastern and Hispanic males did not evidence a bias against Chenier. Chenier concedes he is neither Middle Eastern nor Hispanic. And contrary to his assertion on appeal, the record includes no evidence he is a dark skinned and dark haired Italian. At the hearing, he described himself as "white." Additionally, Chenier makes much of the fact the trial judge asked him where he was born. But where there is no evidence the trial prejudged the case because of ethnicity or race, the judge's question concerning his birthplace was unwise but harmless. Thus, Chenier's claim the trial judge prejudged the case because

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[2] Disapproved on other grounds in *People v. Freeman* (2010) 47 Cal.4th 993 (*Freeman*).

she is biased against Middle Eastern or Hispanic males and he is similarly situated is meritless.

Moreover, the record is void of any evidence the trial judge prejudged the case because Chenier is a male. The fact the trial judge used the pronoun "he" in her musings concerning previous domestic violence cases does not demonstrate she is biased against all males that appear before her. Therefore, we cannot conclude the trial judge's isolated statements demonstrate she prejudged the case or appeared biased against Chenier.

The cases which Chenier relies on (*Haluk v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994 [appearance of judicial bias permeated entire jury trial]; *Catchpole, supra,* 36 Cal.App.4th 237 [trial judge's impatience with sexual harassment and discrimination claims and use of gender-based stereotypes demonstrated judicial gender bias]; *In re Marriage of Iverson* (1992) 11 Cal.App.4th 1495, disapproved on another point in *Freeman, supra,* 47 Cal.4th 993 [trial judge's gender based stereotypes evidenced gender bias]), bear no resemblance to this case.

C. Warning

Although we conclude the record contains insufficient facts supporting a claim of judicial bias, we caution the trial judge to be more thoughtful in her comments concerning her previous cases and statements concerning her perceptions of race, ethnicity, or gender. Such comments suggest ethnic stereotyping that is inconsistent with the fair, impartial, and dispassionate administration of justice. As we explain above, the trial judge's statements did not evidence a bias against Chenier. But in the future, the trial judge's statements about ethnic propensities of past litigants could compel the conclusion the judge prejudged a case based on ethnicity. A trial judge should refrain from comments that suggest he or she has decided a credibility contest based on some matter outside the record. Such statements do not inspire public trust and confidence in our courts.

II. Admissibility of Evidence

Chenier contends the trial court erroneously admitted evidence concerning his tattoos and violent history and ruled inadmissible evidence of his dating Forline's roommate, Morrison, to prove Forline retaliated against him by seeking a restraining order. Neither of his contentions has merit.

Evidence Code section 350 states: "No evidence is admissible except relevant evidence." "'Relevant evidence' means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Although there is no universal test of relevancy, the general rule in criminal cases is whether or not the evidence tends logically, naturally, and by reasonable inference to establish any fact material for the prosecution. (*People v. Freeman* (1994) 8 Cal.4th 450, 491.)

With respect to his claim the trial court admitted evidence of his tattoos and violent history, that evidence was relevant because it tended to prove whether he had a violent nature. Chenier had a tattoo that read, "'Only Killers Survive,'" and included an image of a hand grenade. His "5150" tattoo presumably refers to Welfare and Institutions Code section 5150, which allows a person to be involuntarily confined if the person is a danger to herself or others. And although the tattoo was covered, we are skeptical of Chenier's explanation as to the meaning of his "'F-T-W'" tattoo. He stated it meant, "Free the Whales," but its more common meaning among tattoo enthusiasts is "Fuck the World." Because Chenier was only 23 years old at the time of the hearing, whether he got into fights in high school was relevant because it tended to prove whether he was a violent person. Thus, evidence of violent tattoos and whether he had a history of fighting was relevant to the determination of the action.

As to his claim the trial court erroneously excluded evidence he broke up with Forline and started dating her roommate Morrison, that evidence was irrelevant to a determination of the action. First, the evidence demonstrated the termination of their

relationship was mutual. And although Forline initially stated she was upset Chenier was dating her roommate, Forline explained she was relieved he was no longer in her life and she felt safe. Moreover, when they terminated their relationship and who he was currently dating was of no relevance to the issue of whether Chenier posed a danger to Forline. Thus, the trial court properly excluded evidence of Chenier's personal relationships subsequent to his relationship with Forline.

III. Sufficiency of the Evidence

Chenier claims insufficient evidence supports the trial court's issuance of the five-year restraining order prohibiting him from being within 100 yards of Forline and her daughter, and Forline's home, job, and vehicle, or harassing, contacting, or trying to obtain Forline's contact information. Not so.

Family Code section 6300 states: "An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to [Family Code] [s]ection 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." A trial court may issue a protective order under the Domestic Violence Protection Act (DVPA) based solely on an affidavit showing past abuse. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137 (*Gdowski*).) The level of proof required for issuance of a protective order under the DVPA is a preponderance of the evidence, and we review the factual findings necessary to support the protective order for substantial evidence. (*Ibid*.)

Here, there was substantial evidence supporting the issuance of the protective order. There was evidence that after Morrison and Florine exchanged shoves, Chenier choked Forline with his right hand and grabbed her wrist with his left hand. There was also evidence he hit her, spit on her, and threw things at her, although Forline could not provide certain dates for all those events. This was sufficient evidence for the

trial court to conclude based on a preponderance of the evidence Chenier previously abused Forline.

Chenier succumbs to the common error on appeal of discussing only the evidence that supports his version of the events, and how that evidence requires reversal of the trial court's order. Chenier asserts his and Morrison's testimony contradicted Forline's version of the events, and their testimony demonstrates Forline's testimony is inaccurate. He also claims she provided no documentary evidence supporting her claims.

As we explain above, an affidavit detailing past acts of abuse is sufficient for issuance of a protective order (*Gdowski, supra,* 175 Cal.App.4th at p. 137), and the testimony of a single witness may provide substantial evidence (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614). Where the protective order is supported by substantial evidence, we will not reweight the evidence and substitute our decision for that of the trier of fact. The trier of fact is the sole judge of the witnesses' credibility. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 301.)

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

MOORE, J.